

MONTANA LEGISLATIVE HISTORY

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Chapter 156 19 91

Bill H \_\_\_\_\_ S 206 Original bill & history ✓ C

H. Committee on Business & Economic  
Development

Hearing Date(s) Mar 11 ✓ C

\_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

Date Out Mar 11 ✓ C

S. Committee on Taxation

Hearing Date(s) Feb 06 ✓ C

Feb 15 ✓ C

\_\_\_\_\_ C

\_\_\_\_\_ C

Feb 18 ✓ C

Did this bill originate in an interim committee? \_\_\_\_ Yes \_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

## SENATE FINAL STATUS

SB 207

## SB 205 INTRODUCED BY ECK, ET AL.

REQUIRE INTERAGENCY COOPERATION REGARDING THE  
PROVISION OF CHILDREN SERVICES

|      |                                             |    |    |
|------|---------------------------------------------|----|----|
| 1/26 | INTRODUCED                                  |    |    |
| 1/28 | REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY |    |    |
| 1/28 | FIRST READING                               |    |    |
| 2/11 | HEARING                                     |    |    |
| 2/16 | COMMITTEE REPORT—BILL PASSED AS AMENDED     |    |    |
| 2/18 | 2ND READING PASSED                          | 48 | 0  |
| 2/19 | 3RD READING PASSED                          | 50 | 0  |
|      | TRANSMITTED TO HOUSE                        |    |    |
| 3/04 | FIRST READING                               |    |    |
| 3/04 | REFERRED TO HUMAN SERVICES & AGING          |    |    |
| 3/14 | HEARING                                     |    |    |
| 3/23 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED  |    |    |
| 4/05 | 2ND READING CONCURRED                       | 88 | 9  |
| 4/06 | 3RD READING CONCURRED                       | 82 | 12 |
|      | RETURNED TO SENATE WITH AMENDMENTS          |    |    |
| 4/17 | 2ND READING AMENDMENTS CONCURRED            | 49 | 0  |
| 4/18 | 3RD READING AMENDMENTS CONCURRED            | 49 | 0  |
| 4/22 | SIGNED BY PRESIDENT                         |    |    |
| 4/23 | SIGNED BY SPEAKER                           |    |    |
| 4/23 | TRANSMITTED TO GOVERNOR                     |    |    |
| 4/26 | SIGNED BY GOVERNOR                          |    |    |
|      | CHAPTER NUMBER 655                          |    |    |
|      | EFFECTIVE DATE: 7/01/91                     |    |    |

## SB 206 INTRODUCED BY HALLIGAN

REVISE ADMINISTRATION OF RETAIL ALCOHOLIC BEVERAGE  
LICENSES

|      |                                             |    |   |
|------|---------------------------------------------|----|---|
| 1/26 | INTRODUCED                                  |    |   |
| 1/28 | REFERRED TO TAXATION                        |    |   |
| 1/28 | FIRST READING                               |    |   |
| 2/06 | HEARING                                     |    |   |
| 2/18 | COMMITTEE REPORT—BILL PASSED AS AMENDED     |    |   |
| 2/21 | 2ND READING PASSED AS AMENDED               | 49 | 0 |
| 2/22 | 3RD READING PASSED                          | 49 | 0 |
|      | TRANSMITTED TO HOUSE                        |    |   |
| 3/04 | FIRST READING                               |    |   |
| 3/04 | REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT |    |   |
| 3/11 | HEARING                                     |    |   |
| 3/11 | COMMITTEE REPORT—BILL CONCURRED             |    |   |
| 3/12 | 2ND READING CONCURRED                       | 97 | 1 |
| 3/14 | 3RD READING CONCURRED                       | 98 | 0 |
|      | RETURNED TO SENATE                          |    |   |
| 3/19 | SIGNED BY PRESIDENT                         |    |   |
| 3/20 | SIGNED BY SPEAKER                           |    |   |
| 3/20 | TRANSMITTED TO GOVERNOR                     |    |   |
| 3/25 | SIGNED BY GOVERNOR                          |    |   |
|      | CHAPTER NUMBER 156                          |    |   |
|      | EFFECTIVE DATE: 10/01/91                    |    |   |

## SB 207 INTRODUCED BY HARP, ET AL.

ALLOWING AN ADDITIONAL MILL LEVY FOR A UNIT OF THE  
UNIVERSITY SYSTEM

|      |                                  |    |   |
|------|----------------------------------|----|---|
| 1/26 | INTRODUCED                       |    |   |
| 1/28 | REFERRED TO TAXATION             |    |   |
| 1/28 | FIRST READING                    |    |   |
| 2/06 | HEARING                          |    |   |
| 2/08 | COMMITTEE REPORT—BILL NOT PASSED |    |   |
| 2/08 | ADVERSE COMMITTEE REPORT ADOPTED | 36 | 9 |

....., department of revenue, Helena, Montana, on or before  
the .... day of ....., 19...

Dated ..... Signed .....

ADMINISTRATOR

(2) Each applicant shall, at the time of filing his  
application, pay to the department an amount sufficient to  
cover the costs of publishing the notice.

(3) If the administrator receives no written protests,  
the department may issue or transfer the license without  
holding a public hearing. If written protests by a person  
who has extended credit to the transferor or residents of  
the county from which the application comes or adjoining  
Montana counties against the issuance or transfer of the  
license are received, the department shall hold a public  
hearing at its office in Helena."

**Section 6.** Section 16-4-402, MCA, is amended to read:

"16-4-402. Application -- investigation. (1) Prior to  
the issuance of any a license under this chapter, the  
applicant shall file with the department an application in  
writing, signed by the applicant and containing such  
information and statements relative to the applicant and the  
premises where the alcoholic beverage is to be sold as may  
be required by the department. The application ~~shall~~ must be  
verified by the affidavit of the person making ~~the same~~ it  
before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a  
license under this code, accompanied by the necessary  
license fee or letter of credit as provided in  
16-4-501(7)(f), the department shall within 30 days make a  
thorough investigation of all matters pertaining-thereto  
relating to the application. and The department shall  
determine whether:

(i) such the applicant is qualified to receive a  
license and;

(ii) his premises are suitable for the carrying on of  
the business; and

(iii) whether the requirements of this code and the  
rules promulgated by the department are met and complied  
with.

(b) This subsection (2) does not apply to a catering  
endorsement provided in 16-4-204(2) or a special permit  
provided in 16-4-301.

(3) Upon proof that any an applicant made a false  
statement in any part of the original application, in any  
part of an annual renewal application, or in any hearing  
conducted pursuant to an application, the application for  
the license may be denied, and if issued, the license may be  
revoked."

**Section 7.** Section 16-4-404, MCA, is amended to read:

"16-4-404. Protest period -- contents of license --

posting -- privilege -- transfer. (1) No license may be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code shall set forth state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said the license, and such other information as the department ~~shall--deem~~ considers necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein in which the business authorized under the license is conducted, and such the license ~~shall~~ must be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(3) Any A license issued under the provisions of this code ~~shall-be-considered~~ is a privilege personal to the licensee named in the license and ~~shall-be-good~~ is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or

administrator of the estate of any a deceased licensee when such the estate consists in whole or in part of the business of selling alcoholic beverages under a license, ~~and-in-such~~ event-the The license may descend or be disposed of with the licensed business ~~to--which---it---is---applicable~~ under appropriate probate proceedings.

(5) (a) In--the--event-of-a A licensee may apply to the department for a transfer of the license to different premises if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes ~~or-in-case-of;~~

(ii) expiration--of the lease of the licensed premises has expired or;

(iii) in--the--event--of in case of rented licensed premises, there has been an eviction or increase of rent by the landlord ~~{in-case-of-rented-licensed-premises};~~ or

(iv) in-case-of the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated; ~~the-licensee-may-apply-to-the-department-for a-transfer-of-the-license-to-different-premises.~~

(b) The department may, in-its-discretion after notice and opportunity for protest, permit a transfer in such the cases specified in subsection (5)(a) if it appears to the department that such a transfer is required to do justice to

1 the licensee applying for the transfer and is justified by  
 2 public convenience and necessity. The department ~~shall in no~~  
 3 ~~event nor for any cause permit~~ may not allow a transfer to  
 4 different premises where the sanitary, health, and service  
 5 facilities are less satisfactory than such facilities which  
 6 that exist or had existed at the premises from which the  
 7 transfer is proposed to be made.

8 (6) Upon a bona fide sale of the business operated  
 9 under any a license, the license may be transferred to a  
 10 qualified purchaser. No transfer of any a license as to a  
 11 person or location ~~shall be~~ is effective unless ~~and until~~  
 12 approved by the department, ~~and any~~. A licensee or  
 13 transferee or proposed transferee who operates or attempts  
 14 to operate under any a supposedly transferred license prior  
 15 to the approval of such the transfer by the department,  
 16 endorsed upon the license in writing, ~~shall be~~ is considered  
 17 as to be operating without a license and the license  
 18 affected may be revoked or suspended by the department. The  
 19 department may, within its discretion, permit a qualified  
 20 purchaser to operate the business to be transferred pending  
 21 final approval, providing if there has not been a change in  
 22 location and the application for transfer has been filed  
 23 with the department.

24 (7) Except as provided in subsections (2) through (6)  
 25 and 16-4-204, no license ~~shall~~ may be transferred or sold

1 ~~nor shall it be~~ or used for any place of business not  
 2 described in the license, ~~provided, however, that such~~. A  
 3 license may be subject to mortgage and other valid liens, in  
 4 which event the name of the mortgagee, upon application to  
 5 and approval of the department, must be endorsed on the  
 6 license."

7 **Section 8.** Section 16-4-405, MCA, is amended to read:

8 "16-4-405. Denial of license. (1) The department may  
 9 deny the issuance of a retail alcoholic beverages license if  
 10 it determines that the premises proposed for licensing are  
 11 off regular police beats and cannot be properly policed by  
 12 local authorities.

13 (2) No A retail license may not be issued by the  
 14 department for any a premises situated within any a zone of  
 15 such a city or town where the sale of alcoholic beverages is  
 16 prohibited by ordinance, a certified copy of which has been  
 17 filed with the department.

18 (3) ~~Nor may a~~ A license under this code may not be  
 19 issued if the department finds from the evidence at the  
 20 hearing held pursuant to 16-4-207(3) that:

21 (a) that the welfare of the people residing in the  
 22 vicinity of the place premises for which such the license is  
 23 desired will be adversely and seriously affected;

24 (b) there is not a public convenience and necessity  
 25 justification;

Questions From Committee Members:

Senator Gage asked if this could have an effect on the foundation program.

Senator Harp said it could affect the foundation program.

Senator Koehnke asked who would administer the funds if the levies were passed.

Senator Harp replied the administration of funds would be done by the Board of Regents.

Senator Eck asked if the levy would be voted on every year.

Senator Harp said it isn't spelled out in the bill, but that would be his preference.

Senator Eck asked if the levy could be used for a one time expense and, if so, would that be part of the levy or would the Board of Regents still make the decision on the expenditure.

Senator Harp said the local community could not influence where the money would be spent. That decision would be under the control of the Board of Regents.

Senator Towe said he felt the purpose could be put on the ballot under the provisions of 20-9-353.

Mr. Schram said there are three basic sources of funding for community colleges. The state share is 47%, the other 53% is made up from local levies and tuition and fees.

Closing by Sponsor:

Senator Harp closed.

HEARING ON SENATE BILL 206

Presentation and Opening Statement by Sponsor:

Senator Halligan, District 29, said the bill is presented at the request of his constituents. It clarifies and strengthens procedures for obtaining a liquor license. Problems have arisen regarding repetitive applications for the same location. He said the proponents will explain the problem in greater detail.

Proponents' Testimony:

Kerry Newcomer, Attorney, Missoula, presented testimony in support of the bill (Exhibit #1).

Dan Tabish, Missoula, said he lives across the street from the bar in question. This is the fourth time he has had to close his business and come to Helena for a hearing for the denial of license for the bar. He said it has been denied all three times and he asked how many times it would be repeated.

Opponents' Testimony:

Mark Staples, Montana Tavern Association, said he didn't feel like a full opponent as he often appears as a protestant in hearings on granting of new licenses. He expressed some concern about the denial of the second application for a five year period. If an applicant can change his plans and adapt to the concerns of the neighborhood, he should be able to have a new hearing. He pointed out that striking Section 4 has the effect of having a hearing after the determination is made. He suggested the bill be amended to reflect that if a license is denied to a facility, that the use that was denied cannot be reconsidered for five years. If a new application for a new use for the license is submitted, the restrictions could then be applied to that application and both sides could use information from the previous hearing to defend or oppose the new license.

Questions From Committee Members:

Senator Towe asked for a response from Mr. Newcomer to Mr. Staples comments regarding striking Section 4.

Mr. Newcomer said he disagreed with Mr. Staples. The only time a problem arises is if there are protests to the license application.

Senator Towe asked Mr. Fehlig if an application is routinely granted unless there is a protest. If the application is routinely granted it may make more sense to have the investigation and the initial decision to be followed by the hearing if a protest is filed. This would be in opposition to the other scenario in which, if the license is not routinely granted, the hearing had better be held before the license is granted.

Mr. Fehlig said there are two references to the requirement for a hearing. The first is the reference in Section 4 which is the hearing on public convenience and necessity. Section 7 has a hearing provision which is in response to protests. The Department receives a application and begins the investigation process and review of the application. If it appears to meet the

initial qualifications, it would be published in the local newspapers and an opportunity provided to receive protests. As the statute stands, if no protest is received, there is a requirement in Section 4 that requires a hearing on public convenience and necessity. The intent of Section 4 in the bill is to delete the hearing requirement when there is no protest and the Department has determined that the minimum requirements have been met. If there is even one protest, there will be an open hearing held under the terms of Section 7.

Senator Towe asked if that means Section 4 should be stricken altogether.

Mr. Fehlig says that is, in essence, the way the Department has operated for years.

Senator Towe asked for Mr. Newcomer's response to Mr. Staples concern about the denial for one use and the application five years later for a completely different use.

Mr. Newcomer said he is concerned that if one plan is not approved, the second plan will be slightly altered in order to submit a new application. As a protestant's attorney, it is a larger problem for him. As an owner, the choice would be made on the basis of the best use of his premises as a place where alcoholic beverages would be served. The burden of choice should be on the landowner to determine the best choice for the neighborhood in which he chooses to locate. If he does that, and he is denied, then he should not be able to reapply for five years. He felt the applicant should be able to determine if his application is inappropriate during the initial investigation process with the Department and their determination that the license is justified by public convenience and necessity.

Senator Thayer asked Mr. Staples to respond to Senator Towe's questions.

Mr. Staples said it did not appear that he and Mr. Newcomer were too far apart. He felt the differences could be worked out.

Senator Van Valkenburg asked Diana Koon, Chief, DOR Licensing Bureau, how the Department feels about the issue.

Ms. Koon responded that DOR does not have a position.

Senator Van Valkenburg continued to question Ms. Koon regarding the DOR stance on the bill.

Ms. Koon said DOR has taken a neutral position. She said she has her own personal opinion on some of the issues in the bill. She felt "it would be simpler for her to process applications if she could see it all the through the process one at a time". In regard to not accepting another application for a period of five year, she said she would agree with Mr. Staples



that it should depend on the circumstances of the denial or the withdrawal. In her opinion, she would amend the language on withdrawals. She would be more comfortable if there were a Department decision on an application rather than a withdrawal. There could be circumstances where an application is denied and another party comes in two or three years later with a completely different concept that would be acceptable to the people in the area. Under the five year plan, there would be no opportunity to inform the people until the time had lapsed.

Senator Van Valkenburg would like a Department decision as to the best public policy in this whole area.

Senator Eck asked if it is policy to have all the hearings in Helena.

Ms. Koon replied the law states all hearings must be held in Helena.

Senator Towe agreed with Senator Van Valkenburg and said Mr. Adams should take a position and relay that decision to the committee.

Senator Yellowtail said the primary concern of Section 2 is the welfare of the people in the district. He asked if "public convenience and necessity" is defined anywhere in the statutes.

Mr. Newcomer said it is not defined that he is aware of and he had doubts that it could be adequately defined except in terms of the location and effects on the neighborhood.

Senator Doherty asked how many people are employed in the licensing division.

Ms. Koon replied there are 20 employees. The Division contracts with the Attorney General's office for hearing officers.

Senator Gage suggested if the welfare of the people in the vicinity is going to be affected the bill should reflect "any license in that vicinity" for five years.

Mr. Newcomer responded there could very well be a due process problem inherent in that solution.

Senator Gage referred to the eligibility requirements and asked if the state has any obligation or liability to the licensees or does the legislature

Mr. Fehlig responded rules cannot be changed that are not in compliance with the law or create a rule that is not implied in the statutes. If the eligibility requirements are changed, there has to be some consideration given to a grandfather clause and to methods of dealing with transfers.

Closing by Sponsor:

Senator Halligan closed by saying clearly Section 1 dealing with repetitive applications needs to be addressed. He felt DOR agrees with this. Although the bill was born of the Missoula situation, he felt it was a public interest that should apply statewide. He said he would work with Mr. Staples on the use issue. He asked DOR to address the "clean-up" issues, as well, in an effort to deal with the whole area of licensing. He indicated that he would work with Mr. Staples and Mr. Newcomer in order to develop a workable compromise.

HEARING ON SENATE BILL 213Presentation and Opening Statement by Sponsor:

Senator Towe, District 46, said the bill arose from a special situation with a client who owned a parcel of property outside of Billings that was sold at a tax sale because he had not received notice of taxes due. The man had been absent from his residence for approximately four months laboring under the assumption that his taxes were paid in full. The law says a certified letter must be sent to the property owner before the property can be sold at tax sale. The notice was sent, but, because the gentleman was away, he did not receive the notice to pick up the letter and it was then sent back to the county. The county has no further obligation for notification under existing law, therefore, the property was sold.

The bill would revise the notification procedure, requiring that in cases in which notice sent by certified mail is returned unclaimed, notice shall be served pursuant to Rule 4 of the Montana Rules of Civil Procedure and notice will posted on the premises.

Proponents' Testimony:

There were no proponents.

Opponents' Testimony:

Gordon Morris, Executive Director, Montana Association of Counties, said he opposed the bill for a variety of reasons. He said MACo has extensively studied the tax deed provisions of the law and recognizes there are some problems. He said if a tax payment is not made in November for the first half taxes, a delinquency is created. The Treasurer then publishes notice of the delinquency. At that point anyone can take an assignment on the property which will stay in effect until the taxes are paid. If the taxes are allowed to go delinquent for a total of 36

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 2/6/91

52<sup>nd</sup> LEGISLATIVE SESSION

| NAME                | PRESENT | ABSENT | EXCUSED |
|---------------------|---------|--------|---------|
| SEN. HALLIGAN       | X       |        |         |
| SEN. ECK            | X       |        |         |
| SEN. BROWN          | X       |        |         |
| SEN. DOHERTY        | X       |        |         |
| SEN. GAGE           | X       |        |         |
| SEN. HARP           | X       |        |         |
| SEN. KOEHNKE        | X       |        |         |
| SEN. THAYER         | X       |        |         |
| SEN. TOWE           | X       |        |         |
| SEN. VAN VALKENBURG | X       |        |         |
| SEN. YELLOWTAIL     | X       |        |         |
|                     |         |        |         |
|                     |         |        |         |
|                     |         |        |         |
|                     |         |        |         |

Each day attach to minutes.

2/6/91

# Taxation

# VISITORS' REGISTER

[illegible]

Senate Bill 206  
Introduced by Sen. Halligan

Proponent's Summary for  
Kerry N. Newcomer  
265 West Front  
Missoula, MT 59802  
728-4950

Problems addressed by SB 206:

1. Existing application procedures for alcoholic beverage licenses do not prohibit consideration of concurrent non competing applications for the same location. After a decision denying a contested application the Department of Revenue has gone on to consider a second application for the same premises while the first decision is under administrative appeal or judicial review. This can happen where the applicant abandons or withdraws the initial application and submits a second application. The Department of Revenue does not have clear authority to rely upon prior decisions, so the Department considers the second application without a determination on the merits of the initial application. Interested persons have a right to participate in these decisions and the inability to reach a determination on the merits deprives those interested in substantive due process.

- Section 1 of SB 206 requires completion of administrative and judicial review before a subsequent application may be considered.

2. After an application is denied based upon suitability of location, subsequent applications for the same location must be considered by the Department of Revenue. Under existing procedures the Department publishes notice of the application and holds a hearing if protests are received. Opponents of the application may be required to duplicate their efforts opposing applications for the same location. Department efforts and time are also duplicated.

- Section 2 of SB 206 prohibits consideration for five years of an application for a location that has been found to have an adverse and serious affect on people residing in the vicinity.

3. Under existing procedures the Department of revenue must publish a notice of an application and hold a public hearing if any protests to the application are received. It is not clear if the Department has discretion to deny an application before publication.

- Section 4, amending § 16-4-203, MCA, puts the initial burden on the Department to determine that issuance or transfer of the license is justified by public convenience and necessity. If there is a basis for denial, such as a determination that the location adversely affects the residents in the vicinity, the Department has discretion to deny the application without conducting a public hearing. The applicant retains the right to administrative review. If the Department does not deny the application, then notice is published and if the application is opposed, a public hearing is held.

- Section 5, amending § 16-4-207, MCA, modifies the investigation provisions of the code to be consistent with the Department's discretion to deny an application before publication and hearing.

4. Once an application is granted the Department has no apparent authority to place restrictions on a license.

- Section 3, amending § 16-1-302, MCA, gives the Department authority to restrict a license after a hearing or by agreement.

- Section 6, amending § 16-4-402, MCA, provides the Department an enforcement mechanism where false information is given on application or renewal.

- Section 7, amending § 16-4-404, MCA, clarifies when notice of transfer must be published for existing licenses.

- Section 8, amending § 16-4-405, MCA, clarifies when the Department is prohibited from issuing a license.

- Section 9, amending § 16-4-406, MCA, provides the Department a method and authority for review of licensing eligibility.

EXECUTIVE ACTION ON SENATE BILL 122

Motion:

Senator Van Valkenburg moved to amend Senate Bill 122 to take royalties out.

Senator Van Valkenburg moved Senate Bill 122 DO PASS as amended.

Discussion:

Jeff Martin told the Committee in sub 2 (b) of 60-3-216, the only language being struck if the amount allocated from the royalties.

Senator Gage asked Jeff Martin if this was not a statutory appropriation. Senator Van Valkenburg explained it was earmarked.

Senator Towe explained this is the amount from earmarking highway funds from the coal tax.

Senator Van Valkenburg explained the purpose of sub (b) is to earmark that portion of the gas and diesel fuel tax which is appropriated for the highway reconstruction trust fund.

Senator Van Valkenburg commented this legislation is "one of the very best things done" and he is in hopes of finding gas tax monies to provide funding for the program for the next 10 years.

Recommendation and Vote:

The motion to amend CARRIED with Senator Harp voting NO.

The motion to DO PASS as amended CARRIED.

EXECUTIVE ACTION ON SENATE BILL 206

Motion:

Senator Towe moved the amendments in the "gray bill".

Senator Van Valkenburg moved Senate Bill 206 DO PASS as amended.

Discussion:

Senator Halligan asked Mark Staples of the Tavern Owners Association to comment on the amendments. He told the Committee this accomplishes everything the proponents wanted while

safeguarding the rights of others. He explained the Department of Revenue feels the statute is "cleaned up", and the three parties testifying before the Committee have reached agreement.

Senator Towe pointed to Page 14 where it affects the right to revoke licenses at time of renewal.

Mark Staples explained if the neighborhood has had a hearing, and the proposal is not approved based on criteria deemed allowable for the neighborhood; the next application, if approved, is subject to conditions set in that criteria. If the criteria does not continue to be met after approval, the department has the right to revoke the license.

#### Amendments, Discussion, and Votes:

Senator Eck commented about complaints at having to travel to Helena for hearing. She asked that the language "at its office in Helena" be struck.

Dave Woodgerd explained it would not be within their budget to go outside of Helena for hearings.

Senator Eck moved to amend Page 7, Line 15 by striking "at its office in Helena.". Motion CARRIED.

#### Recommendation and Vote:

Motion to amend CARRIED.

Motion to DO PASS as amended CARRIED.

#### EXECUTIVE ACTION ON SENATE BILL 272

#### Discussion:

Senator Halligan explained a brief discussion would take place on Senate Bill 272.

Senator Towe asked Evan Barrett, Executive Director of the Butte Local Development Corporation what the new language proposed in Senate Bill 272 will do to his program.

Mr. Barrett told the Committee the language as proposed would severely restrict the use of the flexibility of those districts. He explained it creates no competitive advantage in terms in locating value adding industries in those areas. He explained all around the state the feeling has been to not do anything or define it more specifically to involve public and private infrastructural development possibilities.

Senator Towe asked why it is restrictive. Mr. Barrett explained a public purpose is defined as creating value adding industrial growth and jobs. Direct assistance is specified in



## SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 18, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 206 (first reading copy -- white), respectfully report that Senate Bill No. 206 be amended and as so amended do pass:

1. Title, lines 9 and 10.

Strike: "BECAUSE" on line 9 through "VICINITY" on line 10

Insert: "FOR CERTAIN REASONS"

2. Page 2, lines 15 and 16.

Strike: "based" on line 15 through "year" on line 16

Insert: "-- five-year"

3. Page 2, lines 19 through 21.

Strike: "because" on line 19 through "affected" on line 21

Insert: "for any reason provided in 16-4-405"

4. Page 2, line 24.

Following: "years"

Insert: "unless the department, using the criteria described in subsection (3), determines that the proposed use is significantly different from the use that was rejected"

5. Page 3, lines 1 through 4.

Strike: "of" on line 1 through "licensing" on line 4

Insert: "the judicial decision is final"

6. Page 3, lines 6 through 9.

Strike: "the" on line 6 through "licensing" on line 9

Insert: "any reason for denial provided in 16-4-405"

7. Page 3, lines 10 through 12.

Strike: the first "that" on line 10 through "affected" on line 12

Insert: "denying the application for any reason provided in 16-4-405"

8. Page 3, line 16.

Following: line 15

Insert: "(3) The department shall determine whether a proposed use is substantially different by considering:

(a) the capacity of the proposed use;

(b) the nature of the establishment;

(c) the presence and character of any entertainment; and

(d) the characteristics of the neighborhood."

9. Page 5, line 16.

Following: "~~Act,~~"

Insert: ", upon a hearing held pursuant to the Montana  
Administrative Procedure Act,"

10. Page 5, line 18.

Following: "necessity."

Insert: "If there is no opposition to the application for  
issuance or transfer of the license, a hearing is not  
required."

11. Page 7, line 15.

Strike: "at its office in Helena"

Signed: \_\_\_\_\_  
Mike Halligan, Chairman

14-2-19-91  
And. Coord.

5-2-91  
Sec. of Senate

There are some jukeboxes around. If they check them, they can probably be taken to task by the law. He can't understand why the establishment doesn't make any money on this. He has no problems with the Indians playing Shake-A-Day as long as the establishment didn't keep any of the change.

### HEARING ON SENATE BILL 206

#### Presentation and Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 29, Missoula, MT., informed the Committee that SB 206 is a piece of legislation that should have done quite a few years ago. It is an Act revising the laws relating to the administration of beer and wine licenses, special licenses, and all-beverages licenses; limiting concurrent applications for the same premises; prohibiting for 5 years an application for a license in the vicinity of one that was denied for certain reasons; allowing the DOR to place special restrictions on licenses; requiring a determination of public convenience and necessity before transfer of location of a license; etc. It is not a bill by the Department of Revenue, but it does include a combination of some clean up language that the DOR does want. His concern was a particular bar in Missoula which several murders have taken place and neighbors have attempted to try to deal with the application and location of that bar for several years.

If you will look in the first section, they are changing the application process to allow one application to occur until the court has finally decided that issue. What is happening in Missoula could have happened anywhere in the State. Neighbors come to protest during the protest or after the protest, so an applicant simply goes in and files a new application. That is set up in hearing. They have to come over again. In our case it took four applications over several years to try to have the neighbors deal with this. A lot of expense to attorneys and a lot of time for people to have to deal with such issues, so in the Senate we worked with the tavern owners to try to make sure this was a balanced bill. The first section does not allow repetitive applications so it is clean for everybody.

The second section says that if it is denied you can't apply within five years unless there is substantial modification and that is on the bottom of Page 3. In the past there has been concern as to whether a person applying for a liquor license could put on the face of that application particular conditions about the certain kinds and numbers of people, entertainment, etc. Page 5 makes sure that they do have the authority to say here is the kind of liquor license that you have. They can actually put conditions in there.

#### Proponents' Testimony:

Cairo Newcomer, Attorney, represented the people living next to

the OK Corral Bar in Missoula. Experience there has taught me several things. Sections 1 and 2 of SB 206 need to be added to the existing law. The idea is that one application is to be considered at a time. That has been a problem over a six-year time span concerning the various applications at the OK Corral Bar. The second problem this legislation attempts to address is to give the DOR discretion to rely on its previous decisions. As the process is working now, the DOR considers each application for an individual location without any contests. If you have a determination from the DOR after hearing that a location is unsuitable for licensing, there is nothing that stops someone with the application fee from applying again. In our case again and again and again.

Section 2 places a 5-year moratorium on any application on a location determined to be unsuitable so the DOR can refuse similar applications for five years. However, in Section 2, if an application is not similar, then it may be considered within that 5-year period. Sections 3, 5, 6, 7, 8 and 9 are basically tuneup language that clarifies what review power the licensing bureau has. They need to be able to enforce promises that licensees make when applying. It is unclear at this time whether the DOR has that power. Exhibit 4.

Mark Staples, Montana Tavern Association, stated this bill could have benefits. If there is no opposition to the transfer of licenses, a hearing would not have to be held. If there is an application going through the process of application hearing appeal, someone should be able to back off that application and come in under another application process. There should be only one application pending at a time. We have sympathy if a bar has been found unsuitable for certain neighborhoods, but we found the bar could be revamped and changed to adapt to the criteria of the neighborhood.

Opponents' Testimony: None

Questions from the Committee:

REP. ELLIS asked what the cost is for the State to hold these hearings? Cairo Newcomer said it cost my client about \$30-\$40,000. Most people would not pay that. The State's cost was probably similar. This would streamline things and would not cost the Legislature any money.

REP. WALLIN asked what is a suitable location? Cairo Newcomer said the bar talked about was on a deadend street surrounded by the city. Emergency responders are quite away away, and there was only one way in and one way out. To be suitable, the fire department must be able to get in. The parking must be adequate. It must be on regular police beats. The character of the operation must be compatible with the neighborhood.

REP. SCOTT thought there are public nuisance laws concerning

bars? Cairo Newcomer said they are not effective in controlling this kind of case or location. It wasn't an effective remedy for his client. The thing to do was to protest the license which was initially denied and then things went awry.

Closing by Sponsor:

SEN. HALLIGAN said you can't take away that first license. The people want the bar not to be there. The State has jurisdiction over liquor laws. The problem with the nuisance law is that the County Attorney is going to negotiate and the license is not ever going to be taken away. They try to work with the tavern owners to balance out their needs. SB 206 would reduce the cost to applicants, not only new applicants, but for transfers and would clean up the process at the same time.

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor:

SEN. HARRY FRITZ, SD 28, Missoula, MT., explained SB 131 makes it easier for an insurance company to relocate into the State of Montana. Also it makes it easy for it to leave the State of Montana. It is an Act providing a means for a foreign insurer to become a domestic insurer; providing a means for a domestic insurer to transfer its domicile to another state; providing for the continuation of a certificate of authority and other approvals pertaining to an insurer transferring its domicile; and providing an immediate effective date and a retroactive applicability date.

We are talking mainly about small insurance companies, so-called boutique or designer specialty insurance companies. They would have to conform to the current laws of Montana. I do have a proponent who will explain the necessity for the bill.

Proponents' Testimony:

Robert A. Nineto, Jr., Attorney, and Chief Executive Officer for ALPS, a small insurance company that insures lawyers against legal malpractice. It is relatively high risk. We started working on the project a number of years ago and originally domesticated that company to the State of Nevada due to the fact that Montana required us to go through a common law procedure. This bill very simply is designed as an economic development issue. Small insurance companies are cropping up all over the country. Small mutuals are designed to deal with a particular liability of property issues. There is a particularly good environment here in Montana in the insurance department because you can have one on one kind of contact. If you have a question about what is going on, you can talk to the person who is going to be making the decisions. We have the opportunity to attract some already existing companies and this will make that easy. January 1, 1991,

centers. A tourist must be here before you can stop him. The community is going to have to get involved. He thinks the bed tax is doing what it is supposed to do. The state is going to have to fund these and does not have the money.

REP. LARSON said statewide we do have information centers and we do have potential visitor centers at every rest stop on the highway. Those rest stops are poorly used, it would take nothing to develop a brochure rack in each of those.

REP. BARNETT spoke in favor of REP. LARSON's motion.

Vote: Motion HB 861 DO NOT PASS AS AMENDED passed with REPS. TUNBY, BACHINI, STELLA JEAN HANSEN, STEPPLER, SCOTT, RICE, AND McCULLOCH voting NO. HB 861 will advance with an adverse committee report.

EXECUTIVE ACTION ON SENATE BILL 206

Motion: REP. LARSON moved SB 206 BE CONCURRED IN.

REP. WALLIN said there is nothing they can do about overstepping restriction of their operation. Just a problem for fire fighting. SEN. HALLIGAN said Yes, that is correct. The Department of Revenue thinks they need this bill.

REP. LARSON really thinks the DOR did not do its job. They promoted expansion of business. There were two killings in there. They didn't revoke that license the first time. He gives the tavern industry a bad name. He will be glad to see the license gone. The change in the neighborhood sets a line along the river. The bridge was closed and it became a cul-de-sac. The bar would be grandfathered in.

Vote: Motion SB 206 BE CONCURRED IN was adopted with REPS. BENEDICT and STEPPLER voting NO.

REP. RICE, Delay Executive Action on SB 53 until Wednesday. HB 46 will wait until tomorrow. We are also holding HB 901 for tomorrow. Will someone propose a motion to table HB 740.

EXECUTIVE ACTION ON HOUSE BILL 740

Motion: REP. SCOTT moved HB 740 be Tabled. Motion carried unanimously. REP. BACHINI was absent. The sponsor had asked HB 740 be Tabled.

**HOUSE OF REPRESENTATIVES**

**BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE**

## ROLL CALL

DATE March 11, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 206 (third reading copy - blue) be concurred in.

Signed: \_\_\_\_\_  
Bob Bachini, Chairman

Carried by: Rep. Larson



Senate Bill 206  
Introduced by Sen. Halligan

Proponent's Summary by: Kerry N. Newcomer  
265 West Front  
Missoula, MT 59802  
728-4950

Problems addressed by SB 206:

1. Existing application procedures for issuing alcoholic beverage licenses allow consideration of a second application for the same location while the first application is under administrative appeal or judicial review.
  - Section 1 of SB 206 requires completion of administrative and judicial review before a subsequent application may be considered.
2. Present law requires the Department of Revenue to consider a subsequent application for licensing a premises even when a previous substantially similar application was denied because the premises proposed for licensing was determined to be unsuitable.
  - Section 2 of SB 206 creates a five year moratorium for consideration of similar applications. Applications that are substantially different may be considered sooner.
3. Under existing procedures the Department of Revenue must publish a notice of an application and hold a public hearing if any protests to the application are received.
  - Section 4, amending § 16-4-203, MCA, puts the initial burden on the Department to determine that issuance or transfer of the license is justified by public convenience and necessity. If there is a basis for denial, such as a determination that the location adversely affects the residents in the vicinity, the Department has discretion to deny the application without conducting a public hearing. The applicant retains the right to administrative review. If the Department does not deny the application, then notice is published and if the application is opposed, a public hearing is held. If there is no opposition, no public hearing is necessary.
  - Section 5, amending § 16-4-207, MCA, modifies the investigation provisions of the code to be consistent with the Department's discretion to deny an application before publication and hearing.

Ex. 4  
3/11/91  
SB 206

4. Once an application is granted the Department has no apparent authority to place restrictions on a license or enforce promises made by the licensee.

- Section 3, amending § 16-1-302, MCA, gives the Department authority to restrict a license after a hearing or by agreement.

- Section 6, amending § 16-4-402, MCA, provides the Department an enforcement mechanism where false information is given on application or renewal.

- Section 7, amending § 16-4-404, MCA, clarifies when notice of transfer must be published for existing licenses.

- Section 8, amending § 16-4-405, MCA, clarifies when the Department is prohibited from issuing a license.

- Section 9, amending § 16-4-406, MCA, provides the Department a method and authority for review of licensing eligibility.

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**HOUSE OF REPRESENTATIVES**

## VISITOR'S REGISTER

## BUSINESS & ECONOMIC DEVELOPMENT

**COMMITTEE**

**BILL NO.** SB 206

DATE MARCH 11, 1991 SPONSOR(S) SEN. MIKE HALLIGAN

**PLEASE PRINT**

**PLEASE PRINT**

**PLEASE PRINT**

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.